

Subpart P—Overtime Pay for Border Patrol Agents

AUTHORITY: 5 U.S.C. 5548 and 5550(b)(1)(B) and (d)(1)(B); section 2(h), Pub. L. 113–277, 128 Stat. 3005.

SOURCE: 80 FR 58112, Sept. 25, 2015, unless otherwise noted.

GENERAL PROVISIONS

§ 550.1601 Purpose and authority.

This subpart contains OPM regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277), which added section 5550 in title 5, United States Code, and made related statutory amendments. The Act created a special overtime pay program for Border Patrol agents in the U.S. Customs and Border Protection component within the Department of Homeland Security. OPM has authority under 5 U.S.C. 5548(a) to regulate subchapter V (Premium Pay) of chapter 55 of title 5, United States Code, including section 5550 and the Act's amendments to sections 5542 and 5547. OPM was also granted broad authority to promulgate necessary regulations to carry out the Act and the amendments made by the Act under section 2(h) of the Act.

§ 550.1602 Coverage.

This subpart applies to an employee of the U.S. Customs and Border Protection component of the Department of Homeland Security (or any successor organization) who holds a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by OPM. Such an employee is referred to as a “Border Patrol agent” or “agent” in this subpart.

§ 550.1603 Definitions.

For the purpose of this subpart—

Advanced training means all training, other than initial training, provided on a whole-workday basis. Advanced training excludes training that covers only part of an 8-hour basic workday.

Agent means a Border Patrol agent.

Annual period means a 1-year period that begins on the first day of the first pay period beginning on or after Janu-

ary 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year. The term “year” in 5 U.S.C. 5550(b)(1)(A) and (C) and the term “leave year” in 5 U.S.C. 5542(g)(5)(A) are interpreted to be an annual period as defined here.

Basic regular tour of duty means an officially established weekly regular tour of duty consisting of five 8-hour workdays (including no overtime hours) for which no overtime supplement is payable.

Basic workday means the 8 non-overtime hours on a day within an agent's basic workweek.

Basic workweek, for full-time employees, means the 40-hour workweek established in accordance with 5 CFR 610.111.

Border Patrol agent means an employee to whom this subpart applies, as provided in § 550.1602.

CBP means the component of the Department of Homeland Security known as U.S. Customs and Border Protection (or any successor organization). When this term is used in the context of CBP making determinations or taking actions, it means management officials of CBP who are authorized to make the given determination or take the given action.

Hybrid pay period means a biweekly pay period within which—

(1) An agent has one type of established regular tour of duty for one part of the pay period and another type of regular tour of duty for a different part of the pay period; or

(2) An individual is employed as an agent for only a portion of the pay period.

Initial training means training for newly hired agents—including initial orientation sessions, basic training, and other preparatory activities—provided prior to the agent's first regular work assignment in which he or she will be authorized to make arrests and carry a firearm.

Irregular overtime work means officially ordered or approved overtime work that is not regularly scheduled overtime work—i.e., overtime work that is not part of the agent's regularly scheduled administrative workweek.

Leave without pay means a period of time within an agent's basic workweek during which the agent is in nonpay status, including periods of unpaid voluntary absence with approval, absence without approval (AWOL), suspension, or furlough.

Level 1 regular tour of duty means an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (including 2 overtime hours each workday) that provides entitlement to a 25 percent overtime supplement.

Level 2 regular tour of duty means an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (including 1 overtime hour each workday) that provides entitlement to a 12.5 percent overtime supplement.

Obligated overtime hours means regularly scheduled overtime hours that an agent with a Level 1 or Level 2 regular tour of duty is obligated to work as part of the agent's regular tour of duty, if the agent performs any amount of work during regular time on same day, and that are converted into an overtime hours debt when the agent fails to work the hours.

Overtime hours debt means the balance of obligated overtime hours not worked for which the agent has not satisfied the hours obligation by applying compensatory time off hours or other overtime hours of work outside the agent's regular tour of duty.

Overtime supplement means a payment received (in addition to the regular amount of basic pay for nonovertime work) in exchange for regularly scheduled overtime work within an agent's Level 1 or Level 2 regular tour of duty. For an agent who is assigned a 10-hour workday as part of the agent's Level 1 regular tour of duty, the overtime supplement is 25 percent. For an agent who is assigned a 9-hour workday as part of the agent's Level 2 regular tour of duty, the overtime supplement is 12.5 percent. The overtime supplement is computed as provided in § 550.1621(a)(4) and (b)(4). For an agent with a Basic regular tour of duty, the overtime supplement is 0 percent.

Pay period means a 14-day biweekly pay period.

Rate of basic pay means the regular nonovertime rate of pay payable to an agent, excluding any overtime supplement, but including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind. An overtime supplement is included as part of an agent's rate of basic pay for purposes outside this subpart, as provided in § 550.1633.

Regularly scheduled administrative workweek, for a full-time employee, means the period within an administrative workweek, established in accordance with 5 CFR 610.111, within which the employee is regularly scheduled to work.

Regularly scheduled work means work (including overtime work) that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with 5 CFR 610.111.

Regular time means the regular basic (nonovertime) hours within an agent's 8-hour basic workday within the 40-hour basic workweek.

Regular tour of duty means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

- (1) 10-hour workdays (including 2 overtime hours each workday) in exchange for a 25 percent overtime supplement (Level 1); or
- (2) 9-hour workdays (including 1 overtime hour each workday) in exchange for a 12.5 percent overtime supplement (Level 2).

§ 550.1604 Authority of U.S. Customs and Border Protection.

Authorized management officials of U.S. Customs and Border Protection are responsible for determining the mission requirements and operational needs of the organization and have the right to assign scheduled and unscheduled work as necessary to meet those requirements and needs, regardless of an agent's officially established regular tour of duty. (See subsections (a)